IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.901 OF 2000

IN

SUIT NO.867 OF 2000

Bhupat Tribhovandas Vore ...Plaintiff

Versus

Jiten Mathuradas Busa & Anr. ...Defendants

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Mr.B.A.Vora for Plaintiff.

Mr.V.G.Mehta for Defendants.

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CORAM: A.M.KHANWILKAR, J.

APRIL 24, 2007.

P.C.

1. Heard Counsel for the parties. Perused the affidavit filed by the Plaintiff in support of the Notice of Motion. Defendants have filed reply affidavit. That affidavit having been filed on 13th April 2007 served on the Counsel for the Plaintiff on 17th April 2007, I am ignoring the said affidavit. In other words, we are left with the Motion and the affidavit in support of the

Motion filed by the Plaintiff.

2. Going by the assertions in the Plaint as well as the affidavit in support of the Motion, it is not a case for appointment of Court Receiver by way of interim relief.

3. For, interest of justice would be met if the Defendants were to be restrained from creating third party right, title or interest in the suit properties. Counsel for the Defendants, on instructions of the Defendants, states that the Defendants are willing to abide by the said direction till the disposal of the Suit. If this stand of the Defendants were to be accepted, no further relief can be granted to the Plaintiff in the present Notice of Motion.

4. Counsel for the Plaintiff, however, submits that the Plaintiff is entitled for further relief requiring the Defendants to continue to deposit amount of Rs.1,500/- (Rupees One Thousand Five Hundred) per month towards interest component on the principal amount in terms of order dated

19th April 2001. This submission cannot be countenanced for more than one reason.

5. In the first place, the order dated 19th April 2001 has been set-aside and the present Notice of Motion has been restored to file to its original number to be decided on its own merits in accordance with law. It is not in dispute that the Suit filed by the Plaintiff is for recovery of advance amount of Rs.2,00,000/- (Rupees Two Lakhs) given to the Defendants. The properties referred to in prayer clause (b) of the Motion, it is argued by the Plaintiff, is placed as mortgage property with the Plaintiff. In such a Suit, the question of requiring the Defendants to pay amount towards interest component on month to month basis does not arise. The Defendants have already assured before this Court that they will not create third party right, title or interest in respect of the properties referred to in prayer clause (b) of the Motion, which will continue to operate till the disposal of the Suit. In other words, the Defendants shall maintain status-quo as of today

with regard to the said properties till the disposal of the Suit. That relief is more than sufficient to secure the interest of the Plaintiff by way of interim arrangement. In addition, the amount already deposited by the Defendants in this Court in terms of order dated 19th April 2001 be invested in the fixed deposit in any Nationalised Bank initially for a period of four years, to be renewed from time to time till the disposal of the Suit. That amount will be available to further secure the interest of the Plaintiff.

6. Understood thus, this Motion is disposed of by directing the Defendants to maintain status-quo with regard to the properties referred to in prayer clause (b) of the Motion till the disposal of the Suit. Ordered accordingly.

A.M.KHANWILKAR, J.